

HOUSE BILL 429

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Assigned to: Health and Government Operations

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 9, 2004

CHAPTER _____

1 AN ACT concerning

2 **State Government - Administrative Procedure Act - Proposed Regulations**

3 FOR the purpose of providing that a regulation is only effective if all the provisions of
4 the regulation address a single subject; requiring agencies to submit proposed
5 regulations to the Department of Legislative Services; prohibiting the Joint
6 Committee on Administrative, Executive, and Legislative Review from
7 approving a request for emergency adoption of a proposed regulation during a
8 certain period unless the Governor makes a certain declaration; requiring the
9 Committee to impose a time limit, not to exceed a certain length, on the
10 effectiveness of emergency regulations; requiring the website of the General
11 Assembly to include certain information about certain emergency regulations
12 the Committee has received; requiring the Department of Legislative Services to
13 maintain a list of members of the public who have requested to receive notice of
14 the Department's receipt of certain emergency regulations; requiring the
15 Department to provide certain notice to certain members of the public;
16 specifying the manner in which the Department shall administer the list;
17 requiring certain promulgating units to provide copies of emergency regulations
18 to members of the public, on request; authorizing the Committee to ~~take certain~~
19 ~~actions on specific provisions of proposed regulations~~ exercise certain powers
20 over proposed or emergency regulations or certain provisions of proposed or
21 emergency regulations; and generally relating to the Administrative Procedure
22 Act and proposed regulations.

23 BY repealing and reenacting, with amendments,

1 Article - State Government
2 Section 10-110 and 10-111
3 Annotated Code of Maryland
4 (1999 Replacement Volume and 2003 Supplement)

5 BY adding to
6 Article - State Government
7 Section 10-106.1, 10-111.2, and 10-118
8 Annotated Code of Maryland
9 (1999 Replacement Volume and 2003 Supplement)

10 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
11 MARYLAND, That the Laws of Maryland read as follows:

12 **Article - State Government**

13 10-106.1.

14 A REGULATION IS ONLY EFFECTIVE IF ALL PROVISIONS OF THE REGULATION
15 ADDRESS A SINGLE SUBJECT.

16 10-110.

17 (a) This section does not apply to a regulation adopted under § 10-111(b) of
18 this subtitle.

19 (b) At least 15 days before the date a proposed regulation is submitted to the
20 Maryland Register for publication under § 10-112 of this subtitle, the promulgating
21 unit shall submit to the State Children's Environmental Health and Protection
22 Advisory Council established under § 13-1503 of the Health - General Article for
23 review any proposed regulations identified by the promulgating unit as having an
24 impact on environmental hazards affecting the health of children.

25 (c) At least 15 days before the date a proposed regulation is submitted to the
26 Maryland Register for publication under § 10-112 of this subtitle, the promulgating
27 unit shall submit the proposed regulation to the Committee AND THE DEPARTMENT
28 OF LEGISLATIVE SERVICES.

29 (d) (1) The Committee is not required to take any action with respect to a
30 proposed regulation submitted to it pursuant to subsection (b) of this section.

31 (2) Failure by the Committee to approve or disapprove the proposed
32 regulation during the period of preliminary review provided by subsection (b) of this
33 section may not be construed to mean that the Committee approves or disapproves
34 the proposed regulation.

1 (3) During the preliminary review period, the Committee may take any
2 action relating to the proposed regulation that the Committee is authorized to take
3 under §§ 10-111.1 and 10-112 of this subtitle.

4 (e) Prior to the date specified in subsection (b) of this section, the
5 promulgating unit is encouraged to submit the proposed regulation to the Committee
6 and to consult with the Committee concerning the form and content of that
7 regulation.

8 10-111.

9 (a) (1) Except as provided in subsection (b) of this section, a unit may not
10 adopt a proposed regulation until:

11 (i) after submission of the proposed regulation to the Committee
12 for preliminary review under § 10-110 of this subtitle; and

13 (ii) at least 45 days after its first publication in the Register.

14 (2) (i) If the Committee determines that an appropriate review cannot
15 reasonably be conducted within 45 days and that an additional period of review is
16 required, it may delay the adoption of the regulation by so notifying the promulgating
17 unit and the Division of State Documents, in writing, prior to the expiration of the
18 45-day period.

19 (ii) If notice is provided to the promulgating unit pursuant to
20 subparagraph (i) of this paragraph, the promulgating unit may not adopt the
21 regulation until it notifies the Committee, in writing, of its intention to adopt the
22 regulation and provides the Committee with a further period of review of the
23 regulation that terminates not earlier than the later of the following:

24 1. the 30th day following the notice provided BY THE
25 PROMULGATING UNIT under this subparagraph; or

26 2. the [75th] 105TH day following the initial publication of
27 the regulation in the Register.

28 (3) The promulgating unit shall permit public comment for at least 30
29 days of the 45-day period under paragraph (1)(ii) of this subsection.

30 (b) (1) The unit may adopt a proposed regulation immediately if the unit:

31 (i) declares that the emergency adoption is necessary;

32 (ii) submits the proposed regulation to the Committee AND THE
33 DEPARTMENT OF LEGISLATIVE SERVICES, together with the fiscal impact statement
34 required under subsection (c) of this section; and

35 (iii) has the approval of the Committee for the emergency adoption.

1 (2) (i) Subject to subparagraphs [(ii) and (iii)] (II), (III), AND (IV) of this
2 paragraph, the approval of the Committee may be given:

3 1. by a majority of its members who are present and voting
4 at a public hearing or meeting of the Committee; OR

5 2. IF STAFF OF THE COMMITTEE TRIES BUT IS UNABLE TO
6 CONTACT A MAJORITY OF THE MEMBERS OF THE COMMITTEE IN A TIMELY MANNER
7 AND IMMEDIATE ADOPTION IS NECESSARY TO PROTECT THE PUBLIC HEALTH OR
8 SAFETY, by its presiding Chairman OR, IF ITS PRESIDING CHAIRMAN IS
9 UNAVAILABLE, BY ITS CO-CHAIRMAN[; or

10 3. if its presiding Chairman is unavailable, by its
11 co-chairman].

12 (ii) If a member of the Committee requests a public hearing on the
13 emergency adoption of a regulation, the Committee shall hold a public hearing.

14 (iii) 1. If a public hearing is held on the emergency adoption of a
15 regulation, the Committee may not approve the emergency adoption except by a
16 majority vote of the members present and voting at the hearing or at a meeting of the
17 Committee subsequent to the hearing.

18 2. If a vote on the emergency regulation is not taken at the
19 public hearing or immediately thereafter, the Committee members shall be provided
20 at least 1 week's notice of the scheduling of any subsequent meeting to vote on the
21 regulation.

22 (IV) UNLESS THE GOVERNOR DECLARES THAT IMMEDIATE
23 ADOPTION IS NECESSARY TO PROTECT THE PUBLIC HEALTH OR SAFETY, THE
24 COMMITTEE MAY NOT APPROVE THE EMERGENCY ADOPTION OF A REGULATION
25 EARLIER THAN 10 BUSINESS DAYS AFTER RECEIPT OF THE REGULATION BY THE
26 COMMITTEE AND THE DEPARTMENT OF LEGISLATIVE SERVICES.

27 (3) If there is no request for a public hearing, the staff of the Committee
28 may poll, in person, by telephone, or in writing:

29 (i) the members of the Committee; or

30 (ii) if STAFF OF THE COMMITTEE TRIES BUT IS UNABLE TO
31 CONTACT a majority of the members of the Committee [is unavailable] IN A TIMELY
32 MANNER AND IMMEDIATE ADOPTION IS NECESSARY TO PROTECT THE PUBLIC
33 HEALTH OR SAFETY, the presiding Chairman or the co-chairman.

34 (4) (i) The Committee may impose, as part of its approval, any
35 condition[, including a time limit].

36 (ii) THE COMMITTEE SHALL IMPOSE, AS PART OF ITS APPROVAL, A
37 TIME LIMIT NOT TO EXCEED 180 DAYS ON EACH REQUEST FOR EMERGENCY STATUS.

1 (III) If [the Committee imposes a time limit on the effectiveness of
2 the regulation and] the unit does not adopt the regulation finally before the time
3 limit expires, the status of the regulation reverts to its status before the emergency
4 adoption.

5 (5) The Committee may rescind its approval by a majority of its members
6 present and voting at a public hearing or meeting of the Committee.

7 (c) (1) The fiscal impact statement, prepared by the unit and submitted
8 under subsection (b) of this section, shall state:

9 (i) an estimate of the impact of the emergency regulation on the
10 revenues and expenditures of the State;

11 (ii) whether the State budget for the fiscal year in which the
12 regulation will become effective contains an appropriation of the funds necessary for
13 the implementation of the emergency regulation;

14 (iii) if an appropriation is not contained in the State budget, the
15 source of the funds necessary for the implementation of the emergency regulation;
16 and

17 (iv) whether the emergency regulation imposes a mandate on a local
18 government unit.

19 (2) If the emergency regulation imposes a mandate on a local
20 government unit, the fiscal impact statement shall:

21 (i) indicate whether the regulation is required to comply with a
22 federal statutory or regulatory mandate;

23 (ii) if the information may be practicably obtained given the
24 emergency circumstances of the regulations, include an estimate of the impact of the
25 emergency regulation on the revenues and expenditures of local government units;
26 and

27 (iii) if applicable, and if the required data is available, include the
28 estimated effect on local property tax rates.

29 10-111.2.

30 (A) (1) THE WEBSITE OF THE GENERAL ASSEMBLY SHALL INCLUDE A LIST
31 OF ALL EMERGENCY REGULATIONS THE COMMITTEE HAS RECEIVED BUT HAS NOT
32 APPROVED.

33 (2) FOR EACH REGULATION, THE LIST SHALL INCLUDE:

34 (I) THE DATE THE COMMITTEE RECEIVED THE REGULATION;

35 (II) WHETHER A MEMBER OF THE COMMITTEE HAS REQUESTED A
36 PUBLIC HEARING;

1 (III) THE DATE OF ANY PUBLIC HEARING SCHEDULED;

2 (IV) THE DATE AND A SUMMARY OF ANY ACTION THE COMMITTEE
3 HAS TAKEN; AND

4 (V) THE NAME AND TELEPHONE NUMBER OF A MEMBER OF THE
5 COMMITTEE'S STAFF WHO CAN PROVIDE FURTHER INFORMATION.

6 (3) A REGULATION SHALL BE ADDED TO THE LIST WITHIN ~~5~~ 3 BUSINESS
7 DAYS AFTER RECEIPT OF THE REGULATION BY THE COMMITTEE AND THE
8 DEPARTMENT OF LEGISLATIVE SERVICES.

9 (B) (1) THE DEPARTMENT OF LEGISLATIVE SERVICES SHALL MAINTAIN A
10 LIST OF MEMBERS OF THE PUBLIC WHO HAVE REQUESTED TO RECEIVE NOTICE
11 WHEN THE DEPARTMENT OF LEGISLATIVE SERVICES RECEIVES PROPOSED
12 REGULATIONS FOR WHICH THE PROMULGATING UNIT HAS REQUESTED EMERGENCY
13 ADOPTION.

14 (2) A MEMBER OF THE PUBLIC WHO REQUESTS NOTICE UNDER THIS
15 SUBSECTION SHALL SPECIFY:

16 (I) WHETHER THE INDIVIDUAL WANTS TO RECEIVE NOTICE BY
17 UNITED STATES MAIL OR ELECTRONIC MAIL; AND

18 (II) WHICH AGENCIES' REGULATIONS THE INDIVIDUAL WANTS TO
19 RECEIVE NOTICE OF RECEIPT.

20 (3) WITHIN 2 BUSINESS DAYS OF RECEIPT OF A PROPOSED REGULATION,
21 THE DEPARTMENT OF LEGISLATIVE SERVICES SHALL PROVIDE NOTICE TO MEMBERS
22 OF THE PUBLIC WHO HAVE REQUESTED NOTICE, AS SPECIFIED IN PARAGRAPH (2) OF
23 THIS SUBSECTION.

24 (4) THE DEPARTMENT OF LEGISLATIVE SERVICES:

25 (I) MAY IMPOSE A REASONABLE FEE FOR SENDING NOTICE UNDER
26 THIS SUBSECTION BY UNITED STATES MAIL; AND

27 (II) MAY NOT IMPOSE A FEE FOR SENDING NOTICE UNDER THIS
28 SECTION BY ELECTRONIC MAIL.

29 (5) UPON REQUEST, A PROMULGATING UNIT SHALL PROVIDE COPIES OF
30 EMERGENCY REGULATIONS TO MEMBERS OF THE PUBLIC.

31 10-118.

32 ~~AFTER A PUBLIC HEARING ON A PROPOSED REGULATION, THE COMMITTEE~~
33 ~~MAY APPROVE, DENY A REQUEST FOR EMERGENCY STATUS FOR, OPPOSE ADOPTION~~
34 ~~OF, OR REQUEST A PROMULGATING UNIT TO DELAY ADOPTION OF SPECIFIC~~
35 ~~PROVISIONS OF PROPOSED REGULATIONS.~~

1 THE COMMITTEE MAY EXERCISE A POWER GRANTED UNDER THIS SUBTITLE
2 OVER AN EMERGENCY OR PROPOSED REGULATION OR A SPECIFIC, DISTINCT, AND
3 SEVERABLE PROVISION OF AN EMERGENCY OR PROPOSED REGULATION.

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
5 effect October 1, 2004.